

General Information Letter: All Illinois income tax returns must be signed.

August 14, 2000

Dear:

This is in response to your letter dated July 27, 2000. Although you have not requested a ruling, the nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Your letter states as follows:

We represent the estate of xxxxxxxxxxxxxxxxxxxx. At the time of xxxxxxxxxxxxxxxx death, his estate had one asset and a significant amount of debts. Since this asset is less than the statutory small estate amount, we are in the process of trying to distribute that asset to pay the various debts of xxxxxxxxxxxxxxxx as a result of his death. The only asset other than this income tax refund, per the enclosed return, is a \$20,000.00 life insurance policy.

Our problem, however, in filing any final income tax returns and cleaning up all matters with reference to his estate is that the only heir to his estate is a minor. Thus, we do not have an individual who can sign the income tax return on xxxxxxxxxxxxxxxx behalf. Thus, we have enclosed the 1999 Form IL-1040 indicating that he is deceased and no estate or no administrator has been appointed. Please process this return to indicate that all income tax returns have been filed with reference to xxxxxxxxxxxxxxxxxxxx. Since the IRS has received their return also unsigned and agreed to process the same we wanted to make sure a similar return was forwarded to the Illinois Department of Revenue for placement on their records. With reference to the \$31.00 refund, we would agree to process any necessary small estate affidavit or any other documentation to receive this refund to further pay the debts of the deceased. Please note, however, that we will not be preparing a small estate affidavit with reference to the payout on these amounts until such time as we receive the final billing from all creditors.

In the meantime, however, as stated above we would like to make sure the records of the Illinois Department of Revenue clearly indicate that all returns have been filed as required. Please process the enclosed original 1999 Form IL-1040 and place the same on record with the Department of Revenue.

RULING

Section 502(b)(1) of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 *et seq.*) states:

If an individual is deceased, any return or notice required of such individual under this Act shall be made by his executor, administrator, or other person charged with the property of such decedent.

The IITA does define the term "other person charged with the property of such decedent." However, that term would include the affiant of a Small Estate Affidavit under section 25-1 of the Probate Act of 1975 (755 ILCS 5/25-1), or any claimant properly executing Form IL-1310, Statement of Person

Claiming Refund Due a Deceased Taxpayer. Form IL-1310 requires the claimant to declare, under penalties of perjury, that he will disburse the refund according to the law of the state in which the deceased taxpayer maintained a permanent residence. Thus, a claimant properly executing Form IL-1310 may be considered a person charged with the property of the decedent.

IITA section 504 provides:

Each return or notice required to be filed under this Act shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Form IL-1040, Individual Income Tax return, provides in part as follows:

Whether or not you are using a preprinted form and you are filing the return for a single deceased taxpayer or a joint return for which both taxpayers are deceased, write "deceased" and the date of death directly above the decedent's name.

A personal representative, such as an executor, administrator, or anyone who is in charge of the decedent's property, must sign and date the return. The representative's title and telephone number should also be provided. If a refund is due, attach Form IL-1310, Statement of Person Claiming Refund Due a Deceased Taxpayer.

If you do not sign your return, it will not be considered filed and you may be subject to a nonfiler penalty. In addition, if you do not sign your return and three years have passed since the extended due date of that return, any overpayment will be forfeited. If you paid someone to prepare your return, that individual also must provide a handwritten signature, date the return, and provide his or her telephone number and tax identification number.

Accordingly, the Department will not process an unsigned Form IL-1040, Individual Income Tax Return. A person in charge of the decedent's property, as described above, may sign the return. In addition, Form IL-1310, Statement of Person Claiming Refund Due a Deceased Taxpayer, must be filed.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets, or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.120(b).

I hope this information is helpful. If you have further questions concerning this GIL, you may contact Legal Services at (217) 782-7055. If you have further questions related to the Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)